Supreme Court, U.S.
FILED

10 13 13 APR 20 2011

OFFICE OF THE CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

JOHN J. CLELLAN,

Petitioner,

v.

STATE OF OHIO,

Respondent.

APPENDIX

FOR PETITION FOR WRIT OF CERTIORARI

JOAN KATHLEEN CLELLAN
COUNSEL OF RECORD
P. O. BOX 492
GALLOWAY, OHIO 43119
(614) 561-8657
E-MAIL: jim.dandy60@yahoo.com

April 19, 2011

TABLE OF CONTENTS

APPENDIX

A - August 17, 2010 decision on direct appeal

B - February 8, 2011 decision for reopening

C - January 19, 2011 decision of Ohio Sup. Ct.

D- Request for Discovery

E- Second amendment of U.S Constitution

F- Sixth amendment of U.S. Constitution

G- Fourteenth amendment of U.S. Const.

H- O.R.C. 2901.05 "Castle Doctrine"

I- O.R.C. 2903.21 (Aggravated Menacing)

J- Proposed Jury Instructions

K- Jury Instructions

L- 911 Transcript

M- Purloined Statement of Deputy Felkner

{A}

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,

Plaintiff-Appellee

v. No. 09AP-1043
(M.C. 2009 CRB 2626

John Clellan, (REGULAR CALENDAR)

Defendant-Appellant.

DECISION

Rendered on August 17, 2010

Richard C. Pfeiffer, Jr., City Attorney, Lara N. Baker, City Prosecutor, Melanie R. Tobias and Orly Ahroni, for appellee.

Javier H. Armengau, for appellant.

APPEAL from the Franklin County Municipal Court

BRYANT, J.

1) Defendant-appellant, John Clellan, appeals from a judgment of the Franklin County Municipal

Court finding him guilty, pursuant to jury verdict, of aggravated menacing in violation of R.C. 2903.21. Because (1) sufficient evidence supports the jury's verdict, (2) the manifest weight of the evidence supports the jury's verdict, and (3) defendant's counsel was not ineffective, we affirm.

1. PROCEDURAL HISTORY

2) On February 4, 2009, an argument arose between defendant and Robert Litchfield on a Grove City street concerning Litchfield's parked car, which partially blocked defendant's path to his driveway. As the argument escalated, defendant pulled a gun on, an threatened to shoot, Litchfield.
3) As a result of the incident, a complaint was filed in the Franklin County Municipal Court on February 5, 2009 charging defendant with aggravated menacing in violation of R.C. 2903.21. The complaint stated that defendant did "[k]nowingly cause another, to wit: Robert L. Litchfield, to believe that John Clellan would cause serious physical harm to said other, to wit: John Clellan pointed a handgun at Mr. Litchfield and stated, "I'll kill your ass."
4) Trial began on October 6, 2009, and the prosecution presented testimony from Litchfield, his brother-in-law's girlfriend, Karen Devine-Riley, and Deputy Brian Felkner. The defense followed with testimony of defendant and his wife, Joan, who was charged separately with the same offense

and subsequently was found not guilty. Based on the evidence, the jury found defendant guilty of aggravated menacing, and the trial court sentenced defendant accordingly.

II. ASSIGNMENTS OF ERROR

5) Defendant appeals, assigning the following errors:

ASSIGNMENT OF ERROR I:
The trial court erred by not granting Appellant's Motion for a Rule 29 Dismissal.

ASSIGNMENT OF ERROR II:
The convictions in the instant case are not supported by sufficient evidence.

ASSIGNMENT OF ERROR III:
The convictions in the instant case are against the manifest weight of the evidence.

ASSIGNMENT OF ERROR IV:
Trial counsel was ineffective for failing to make any argument whatsoever for his Rule 29 Motion to Dismiss.

ASSIGNMENT OF ERROR V:
Trial counsel was ineffective for failing to make a Motion for a Judgment Notwithstanding the Verdict.

III. FIRST AND SECOND ASSIGNMENTS OF ERROR - SUFFICIENCY OF THE EVIDENCE

6) Defendant's first and second assignments of error contend not only that the state failed to present sufficient evidence to support the charged offense but that the trial court erred in denying defendant's Crim.R. 29 motion for acquittal.

7) Pursuant to Crim.R. 29(A), a court "shall order the entry of a judgment of acquittal of one or more offenses * * * if the evidence is insufficient to sustain a conviction of such offense or offenses." Because analysis of the evidence for the purposes of a Crim.R. 29(A) motion looks at the sufficiency of the evidence, a Crim.R. 29(A) motion and a review of the sufficiency of the evidence are subject to the same analysis. State v. Tenace. 109 Ohio St.3d 255, 2006-Ohio-2417, P.37.

8) Whether the evidence is legally sufficient to sustain a verdict is a question of law. State v. Thompkins (1997), 78 Ohio St.3d 380, 386. Sufficiency is a test of adequacy of the evidence. Id. We construe the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found the essential elements of the offense proven beyond a reasonable doubt. State v. Jenks (1991), 61 Ohio St.3d 259, paragraph two of the syllabus; State v. Conley (Dec. 16, 1993), 10th Dist. no. 93AP-387.

9) According to the state's evidence, Robert Litchfield was dropping off his brother-in-law's girlfriend, Karen Devine-Riley, at her home in Grove City on the evening of February 4, 2009. Because of icy conditions in the driveway, Litchfield parked his car partially on the road and partially in the driveway. Earlier plowing left snow banks on the side of the road, making the road narrower than was customary. Devine-Riley exited the car in order to unload firewood from the trunk.

10) Meanwhile, defendant's wife, Joan Clellan, had pulled the Clellan's truck straight into their driveway after returning home. Defendant preferred the truck to be backed into the driveway, so he went outside to turn around the truck. In order to perform the maneuver, defendant pulled the truck past Devine-Riley's driveway, turned the truck around, and then began to back it into his own driveway. in the course of backing, defendant came close to Litchfield's parked car. Defendant stopped his truck so that the front of the truck was almost even with the rear of Litchfield's car, and a verbal altercation ensued.

11) Devine-Riley testified that, upon stopping his truck, defendant began to scream profanities at her, repeatedly saying, "You're not going to assault me." (Tr. 119.) Devine-Riley assured defendant they would be only a minute and intended to move the car shortly.

12) In the course of the escalating exchange, defendant opened the door of his truck, stood on the floor of the truck between the door and the cab, and continued to scream and swear at Devine-Riley.

13) At that point, Litchfield came to the front of the truck, next to Devine-Riley, and asked, "What the f_ _ _ is your problem? Why are you screaming at her?" (Tr. 40.) Defendant then pulled a gun, pointed it at Litchfield, and said, "I'll blow your f_ _ _ing brains out." (Tr. 40.) Litchfield, who was about four feet away from defendant, feared defendant would shoot him; he was afraid he was going to die, because defendant pointed the gun at Litchfield's head. Litchfield called 911 because Devine-Riley was shaking so badly she could not dial the number. Police responded to the call and ultimately charged defendant with aggraved menacing under R.C. 2903.21(A).

13) Under the charged offense, the prosecution had the burden to prove defendant "knowingly cause[d] another to believe that [he would] cause serious physical harm to the person or property of the other person." R.C. 2903.21(A). Litchfield testified he not only feared defendant would shoot him but was afraid he would die because defendant had the gun pointed at his head.. Construed in the light most favorable to the prosecution, the evidence supports the

conclusion that defendant knowingly caused Litchfield to believe he would cause serious physical harm to Litchfield. The prosecution thus presented sufficient evidence to defeat defendant's Crim.R. 29(A) motion for acquittal and to sustain a conviction for aggravated menacing under R.C. 2903.21. Defendant's first and second assignments or error are overruled.

IV. Third Assignment of Error – Manifest Weigt of the Evidence

14) Defendant's third assignment of error asserts his conviction is against the manifest weight of the evidence. When presented with a manifest weight argument, we engage in a limited weighing of the evidence to determine whether sufficient competent, credible evidence supports the jury's verdit to permit reasonable minds to find guilt beyond a reasonable doubt. Conley, supra; Thompkins at 387 (noting that "[w]hen a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the weight of the evidence, the appellate court sits as a "thirteenth juror" and disagrees with the factfinder's resolution of the conflicting testimony"). Determinations of credibility and weight of the testimony remain within the province of the trier of fact. State v. DeHass (1967), 10 Ohio St.2d 230, paragraph one of the syllabus. The jury thus may take note of the inconsistencies and resolve them accordingly, "believ[ing] all, part or none of a witness's testimony." State v. Raver, 10th Dist. No. 02AP-604,

2003-Ohio-958, P.21, citing State v. Antill (1964), 176 Ohio St. 61, 67.

15) Defendant's testimony differs significantly from that of Litchfield and Devine-Riley. Defendant testified that as he was backing down the street to enter his driveway, he saw Litchfield's car pull into the middle of the street and stop; the trunk opened. Defendant decided his truck could not pass the car if he remained on the street but believed he could drive his truck over the mound of snow that the earlier plowing created. While backing past Litchfield's car at "less than walking speed," defendant heard Devine-Riley say, "Wait a damn minute." (Tr. 211.) Believing Devine-Riley dropped something that rolled under his truck, defendant stopped. Devine-Riley said she would be out of the way momentarily. Defendant told her she was blocking the street, and he needed to get to his driveway. Devine-Riley said she could not hear him, so he opened the door and repeated himself, eventually standing up to continue the discussion. The exchange became unfriendly. Devine-Riley told defendant she was "sick of you damn people." and defendant responded that they were "going to settle this in court. I'm not going to argue with you about this any more." (Tr. 211.)

16) Litchfield at that point exited his car, walked up to the front of defendant's truck and said, "I'm just dropping her off, F_ _ _-face" (Tr. 212.) Defendant advised he did not care what Litchfield was doing, but Litchfield could not block the street. Litchfield then offered to "whoop

[defendant's] ass." (Tr. 212.) When defendant retorted that doing so would land Litchfield in jail, Litchfield said, "Come out of there," walked toward the open truck door, and began to shadow box and kick the fender of the truck. (Tr. 212.)

17) Believing Litchfield to be "nuts," defendant grabbed his wife's .45 pistol from the console and held it at his side, though Litchfield had begun to retreat from the truck. (Tr212-13.) Seeing the gun, Devine-Riley told Litchfield, "Now, see. Now he's got a gun." (Tr. 213.) Litchfield turned and said, "Oh, you pulled a gun on me? Now I will kill you, m_ _ _ _ _ _F _ _er." (TR. 213.) Litchfield charged the window of the truck and reached through the window of the open truck door. In response, defendant brought the gun up and used the door as a shield by placing his foot against it. When Litchfield attempted to walk around the door of the truck to get at defendant, defendant warned Litchfield to "[g]et back. You're going to get shot." (Tr. 213.) Devine-Riley was able to convince Litchfield to retreat, so defendant returned the gun to the console and sat down. Devine-Riley returned to the truck and told defendant they would call the police since he pulled a gun on them. Defendant explained he did so because Litchfield tried to pull him out

of his truck; defendant advised they must leave his truck alone.

18) Devine-Riley and Litchfield moved away from the truck, and Litchfield retrieved a cell phone. Defendant shut the door and put the truck in gear and "gassed it" toward his driveway. (Tr. 214.) Checking his mirrors to see where he was going, defendant looked up to see Devine-Riley and Litchfield chasing after his truck as he backed down the street. Running the truck aground on a pile of rocks and snow with Devine-Riley and Litchfield in pursuit, defendant saw his wife Joan coming out of the house and to the door of the truck. He handed her the gun and said, "If they come down here and try to hurt us, shoot them." (Tr. 215) Litchfield and Devine-Riley "backed off" to Litchfield's car; defendant parked his truck in the driveway. (Tr. 215.) The Clellans entered their home, slammed the door, and locked it.

19) Neither defendant's evidence not the state's evidence suggests defendant did not commit the act for which he was charged. Indeed, defendant testified that at one point he "brought the gun up" and said to Litchfield, "Get back. you're going to get shot." (Tr. 213.) Defendant's response to Devine-Riley's accusation that

he pulled a gun on someone was, "You're damn right." (Tr. 214) Instead, defendant's challenge to the manifest weight of the evidence raised issues of self-defense.

20) Defendant initially argues the jury lost its way because the prosecution never rebutted the presumption of self-defense set forth in R.C. 2901.05 (B), sometimes referred to as the "Castle Doctrine." Pursuant to the provisions of R.C. 2901.05 (B), the court instructed the jury that if it were to find by a preponderance of the evidence (1)"the defendant used defensive force," and (2) "the person against whom the defensive force was used was in the process of unlawfully and without privilege to do so, entering the residence and/or vehicle occupied by the defendant," then the jury must find the defendant acted in self-defense and enter a verdict of not guilty. (Tr. 312.) Of the two factors, only the second is disputed. The parties presented conflicting evidence about whether Litchfield was in the process of unlawfully and without privilege entering defendant's vehicle and whether defendant occupied the vehicle.

21) The prosecution, however, presented Litchfield's testimony that when defendant brandished the gun, Litchfield was at the front of the truck, four or five feet from defendant. After the defendant pulled the gun, Litchfield only backed away. When

asked if he ever recalled touching the truck, Litchfield said, "No, never touched it." (Tr . 53.) Deputy Brian Felkner also provided testimony supporting Litchfield's version of events, testifying defendant changed his story about what occurred. Defendant initially told Felkner that Litchfield tried to pull him out of his vehicle by reaching through the window. When Felkner asked defendant how he could brandish a firearm while being pulled out of the truck, defendant admitted Litchfield was not pulling him from the vehicle, but only reached into the truck's window. Confused about why Litchfield would reach into the vehicle without doing anything else, Felkner inquired further. Defendant then admitted Litchfield did not reach into the vehicle; defendant only thought Litchfield would do so.

23) Faced with such conflicting testimony, the jury the responsibility to determine witness credibility. Given the discrepancies in in testimony Litchfield and defendant offered, the jury could have reasonably found Felkner's testimony supported Litchfield's version of events and thus concluded Litchfield was not in the process of unlawfully and without privilege entering defendant's vehicle.

24) Moreover, despite defendant's claim that the uncontroverted evidence demonstrated

he was in his vehicle at all times he had the gun, some testimony indicated defendant did not occupy the truck when he possessed the gun. Litchfield testified defendant was standing on the rocker panel between the door and the cab of the truck. When asked what was above defendant's head at that point, Litchfield said, "Nothing." (Tr. 42.) Asked if defendant's head was outside of the truck, Litchfield replied affirmatively. Regarding the location from which defendant yelled profanities at her, Devine Riley stated defendant first yelled through the window. Devine-Riley then testified she was "not sure if [defendant] was standing on the running board or if he was standing on his truck, but he was taller * * * so he was kind of above the truck" when he continued yelling at her. (Tr. 118.) Both Litchfield's and Devine-Riley's testimony thus contradicts defendant's evidence that he was in his vehicle at all times. Indeed, defendant himself testified that once Litchfield and Devine-Riley were far enough away from the truck, he was able to "put the gun down on the console, and sit down." (Tr. 214.) The jury reasonably could conclude defendant was unable to stand while remaining inside the vehicle and thus also conclude defendant did not remain in the vehicle during his encounter with Litchfield and Devine-Riley.

25) Based on its resolution of the conflicting

evidence, the jury properly could refuse to apply R.C. 2901.05 (B). Defendant none the less contends the jury lost its way in failing to conclude that, apart from the "Castle Doctrine," defendant acted in self-defense.

26) Self-defense is an affirmative defense, and the burden of proof rests upon the accused. R.C. 2901.05 (A). The accused must show each of three elements in order to establish self-defense: (1) the accused was not at fault in creating the situation; (2) the accused had a bona fide belief that he or she was in imminent danger of death or great bodily harm and that the only means of escape was the use of force; (3) the accused did not violate any duty to retreat or avoid the danger. See State v. Melchior (1978), 56 Ohio St.2d 15, 20-21 (involving homicide); State v. Ward, 168 Ohio App.3d 701, 2006-Ohio-4847, P. 30 (addressing assault); State v. Ludt, 180 Ohio App.3d 672, 2009-Ohio-416, P. 21 (concerning aggravated menacing).

27) Here, the second prong of the sel-defense test defeats defendant's challenge to the manifest weight of the evidence as it relates to his contention that he acted in self-defense. Evidence in the record suggests defendant did not have a bona fide belief he was in imminent danger of death or great bodily harm. Defendant

testified he could "only assume that when [Litchfield] progressed around the outside of the door, that his intention was, indeed, to come in and get ahold of me." (Tr. 276.) When asked if Litchfield ever climbed in, defendant responded Litchfield did not. Similarly, when asked if Litchfield could have climbed in, had he wanted to, defendant replied "I don't think so." (Tr. 276.) The testimony gave the jury reason to discredit defendant's testimony, allowing the jury reasonably to conclude defendant did not believe himself to be in danger of death or great bodily harm.

28) Because the record presents a basis for the jury to find adversely to defendant on at least one of the three prongs of the self-defense test, the jury's verdict is not against the manifest weight of the evidence. The jury thus did not lose its way when it did not find defendant acted in self-defense.

29) Defendant's third assignment of error is is overruled.

V. Fourth and Fifth Assignments of Error-Ineffective Assistance of Counsel

30) To prove ineffective assistance of counsel, defendant must establish counsel's performance was deficient. Strickland v. Washington, (1984), 466 U.S. 668, 687, 104

> S. Ct. 2052, 2064. To carry that burden, the defendant must demonstrate the counsel made errors so serious that counsel was not functioning as the "counsel" the Sixth Amendment guarantees. Id. Secondly, the defendant must demonstrate the deficient performance prejudiced the defense. Id. The defense is prejudiced when the record reveals a reasonable probability that the outcome of the proceeding would have been different if not for counsel's errors. Id. at 694, 2068. Thus, the defendant must establish counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. Id. at 687, 2064. Unless a defendant makes both showings, the conviction cannot be said to have resulted from a breakdown in the adversary process that renders the result unreliable. Id.

31) Defendant's Fourth and Fifth Assignments of Error assert his trial counsel was ineffective in two ways: (1) his attorney failed to argue the merits of defendant's Crim. R. 29 Motion, and (2) his attorney failed to move for a judgment not withstanding the verdict. A judgment not withstanding the verdict applies in civil cases. See Civ. R. 50 (B); It is not a motion found among the criminal rules. The most nearly equivalent rule in criminal procedure is Crim. R. 29 (C), which permits a defendant to move for acquittal after verdict or discharge of jury. Defendant's two assignments of error are thus resolved under Crim. R. 29: the fourth assignment of

error under Crim R. 29 (A) and the fifth under Crim. R. 29 (C).

32) Trial counsel was not ineffective in failing to argue the merits of defendant's Crim. R. 29 (A) motion for acquittal. Because, as noted above, the state presented sufficient evidence to support the charge against defendant, trial counsel's argument would have been unavailing. Trial counsel is not ineffective for not moving for acquittal under Crim. R. 29 (A) where sufficient evidence supports a conviction. State v. Shipley, 10th Dist. No. 05AP-385, 2006-Ohio-950. Similarly, counsel is not ineffective in moving for acquittal without a supporting argument where, as here, the state presented sufficient evidence to support the charge against defendant. Defendant's fourth assignment of error is overruled.

33) Nor was trial counsel ineffective in failing to file a motion for acquittal under Crim. R. 29 (C). The same standard governs motions under both Crim. R. 29 (C) and Crim. R. 29 (A). State v. Hill, 10th Dist. No. 07Ap-889, 2008-Ohio-4257, citing State v. Beehive Ltd. Partnership (1993), 89 Ohio App.3d 718, 723. Because sufficient evidence supports defendant's conviction, defense counsel's moving for acquittal pursuant to Crim. R. 29 (C) again would have been unsuccessful.

Defendant's fifth assignment of error is overruled.

34) Having overruled defendant's five assignments of error we affirm the judgment of the trial court. Judgment affirmed.

Klatt and French, JJ., concur.

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

STATE OF OHIO,

PLAINTIFF-APPELLEE

V.

NO. 09AP-1043
(M.C. No. 2009 CRB 2626)

JOHN CLELLAN,

(Regular Calendar)

DEFENDANT-APPELLANT

JUDGMENT ENTRY

For the reasons stated in the decision of this court rendered herein on August 17, 2010, and having overruled defendant's five assignments of error, it is the judgment and order of this court that the judgment of the Franklin County Municipal Court is affirmed. Costs to assessed to defendant.

BRYANT, KLATT & FRENCH, JJ.

By _____
Judge Peggy Bryant

{B}

Memorandum Decision of February 8, 2011
Case No. 09AP-1043 online.

{C}

THE SUPREME COURT OF OHIO

STATE OF OHIO

Case No. 2010-1711

V.

ENTRY

JOHN CLELLAN

Upon consideration of the jurisdictional memoranda filed in this case, the Court declines jurisdiction to hear the case and dismisses the appeal as not involving any substantial constitutional question.

(Franklin County Court of Appeals; No. 09AP1043)

s/

Maureen O'Connor
Chief Justice

{ D}

2. Copies of any written or recorded statements made by defendant, or any co-defendant, or written summaries of any oral statements made by the same to any law enforcement officer ...

* * *

6. Disclosure of any evidence known or which may become known to the Prosecuting Attorney, favorable to the defendant and material to either guilt or punishment per Criminal Rule 16(B)(1)(f)

{ E}

The Second amendment of the United States Constitution in pertinent part:

" . . . the right of the people to keep and bear arms shall not be infringed."

{F}

The Sixth amendment of the United States Constitution in pertinent part:

"In all criminal prosecutions the accused shall enjoy the right ...to have the assistance of counsel for his defense."

{G}

The Fourteenth amendment of the United States Constitution in pertinent part:

"No State shall . . . deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

{ H }

Ohio Revised Code 2901.05, Ohio's "Castle Doctrine" in pertinent part:

"Burden and degree of proof; presumption concerning self-defense or defense of another; jury instructions concerning reasonable doubt

(A) Every person accused of an offense is presumed innocent until proven guilty beyond a reasonable doubt, and the burden of proof for all elements of the offense is upon the prosecution. The burden of going forward with the evidence is an affirmative defense, and the burden of proof, by a preponderance of the evidence, for an affirmative defense, is upon the accused.

(A)(1) Subject to division (B) (2) of this section, a person is presumed to have acted in self-defense or defense of another when using defensive force that is intended or likely to cause death or great bodily harm to another if the person against whom the defensive force is used is in the process of unlawfully and without privilege to do so entering, or has unlawfully and without

privilege to do so entered, the residence or vehicle occupied by the person using the defensive force.

(2)(a) The presumption set forth in division (B) (1) of this section does not apply if the person against whom the defensive force is used has a right to be in, or is a lawful resident of, the residence or vehicle.

(b) The presumption set forth in division (B) (1) of this section does not apply if the person who uses the defensive force uses it while in a residence vehicle and the person is unlawfully, and without privilege to be, in that residence or vehicle.

(3) The presumption set forth in (B) (1) of this section is a rebuttable presumption and may be rebutted by a preponderance of the evidence.

{ I }

The Ohio Revised Code Section 2903.21 (Aggravated Menacing) provides, in pertinent part:

" (A) No person shall knowingly cause another to believe that the offender will cause serious physical harm to the person or property of another person"

{ J }

See transcript of October 6, 2009 jury trial Franklin County Municipal Court, Franklin County, Ohio

{ K }

JURY INSTRUCTIONS

SELF-DEFENSE IN A RESIDENCE OR VEHICLE

" The defendant claims he acted in self-defense or in defense of another. While the burden of proof is always on the defendant to prove self-defense, the law creates a presumption that a person acted in self-defense in certain circumstances. This means that if you find by a preponderances (sic) of the evidence that the following factors are true, you must find that the defendant acted in self-defense and must enter a verdict of acquittal.

(A). The defendant used defensive force;

(B). That the person against whom the defensive force was used was in the process of unlawfully and without privilege to do so, entering the residence and/or vehicle occupied by the defendant;

(C). 'vehicle' means a conveyance of any kind, whether or not motorized, which is designed to transport people or property;

(D). 'privilege' means any immunity, license or right conferred by law, bestowed by expressed or implied grant, arising out of a status, position, office, relationship, or growing out of necessity."

911 Transcript of February 4, 2009:

. . . 2009 at 1729 on channel 9.

DISPATCHER: 911, What's your emergency?

LITCHFIELD: Yeah, I need a sheriff or a cop out here. I'm in Darbydale.

D: What's the address of where you're at?

L: I'm on Darby Boulevard. This guy just pulled a gun on me.

D: Darby Boulevard and where? I need an address.

L: What's the address here?

(female voice): 6586.

L: 6586.

D: Tell me what happened. Who's the guy and what exactly did he do?

L: I don't know his name, but he's a neighbor to a friend of mine? I was dropping her off. I didn't want to pull down on the ice and he was leaving, so I stopped right here at the road. And then he backed up and almost hit her, and then jumped out and started running his mouth. And I said – you know, I went up to him and I said, if you want to run your

mouth, you know, whatever. Then he pulled a gun out on me.

D: Do you know where he lives at?

L: He's giving the gun to his wife and he said if I try anything, shoot me.

D: Are they there now?

L: Yes, he's here now.

(female voice): He did nothing; nothing.

L: She's saying ---- she's saying I was trying to drag him out of the truck.

(female voice): You're lying. you're making up stories.

D: O.K. 6586 Darby, right?

L: Yes.

D: O.K. O.K. What he said - - he got mad at you. He pulled a gun on you, then he gave it to his wife and told her to shoot you?

L: Yeah. When he first pulled the gun - - -

D: Is he in the car?

L: He was in the car.

D: What kind of car?

L: It's a red, Chevy pickup. The gun looks like a .45. It's a automatic. And he said he was going to shoot me, was going to blow my brains out. Then he gave the gun to his wife and told her if I do anything for her to shoot me. But he's still running his mouth to me.

D: O.K. Are you in a vehicle, too?

L: Yes, I was in a vehicle. And I got eight-year-old daughter - - -

(female voice): And my seven-year-old daughter.

L: and her seven-year-old girl at the house.

D: O.K. He's in a red, Chevy pickup and he's got a 45 millimeter gun; is that correct? He is currently now threatening to blow your brains out?

L: Yes. Then he gave the gun to his wife and told his wife if I do anything stupid to shoot me.

D: Is she in the vehicle with him?

L: No. They went right back in their house, cause he could back - - he backed all the way back up into the driveway.

D: And their house is 6586 or is that yours?

L: That's ours, 6586.

D: So where did they go?

L: It's at the dead end of the street and they live right beside them.

D: So it's the dead end of Darbydale?

L: Yeah - - or it's Darby Boulevard.

D: O.K. We're on the way. O.K?

L: O.K.

D: All right.

{M}

Defendant, John Clellan
On 2-4-09 at approx. 17:29 hrs., I responded to a report of a man w/ a gun at 6586 Darby Blvd. Grove City, Ohio. When arrived I made contact with the victims Robert L. Litchfield and Karen Devine/Riley. Both victims stated that they had a verbal argument with Mr. John Clellan who resides at 6574 Darby Blvd. over a parking issue in the roadway of Darby Blvd. Victim Mr. Litchfield stated that during the argument, a brandished a handgun from his waist band area and stated "I'll kill your ass." The defendant' s wife, Joan Clellan, then came out of the residence. Mr. Clellan then handed the weapon to Mrs. Clellan then pointed the weapon at Mr. Litchfield while Mr. Clellan moved his vehicle in to his driveway. Both Mr. and Mrs. Clellan then retreated inside their home while Ms. Devine-Riley called 911. After speaking to Mr. Litchfield both Mr. and Mrs. Clellan then came out of the house. Both suspects were taken into custody at that time. Once seated, Mr. Clellan was mirandized and stated first that Mr. Litchfield attempted to "pull him from his vehicle." Mr. Clellan then later stated that Mr. Litchfield did not attempt to get him from the vehicle. Both suspects were arrest and transported to 370 S. Front Street for slating.